MOTION FILED
OCT - 1 1985

No. 84-1076 (17)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
Appellant,

v.

THE STATE OIL AND GAS BOARD OF MISSISSIPPI
AND
COASTAL EXPLORATION, INC., *et al.*,
Appellees.

On Appeal from the Supreme Court of Mississippi

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR THE STATE OF LOUISIANA AS AMICUS CURIAE

*DAVID B. ROBINSON
DEBORAH M. LODGE
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Attorneys for
The State of Louisiana

HONORABLE EDWIN W. EDWARDS
Governor, State of Louisiana
HONORABLE WILLIAM J. GUSTE, JR.
Attorney General, State of Louisiana
HONORABLE B. JIM PORTER
Secretary, Department of Natural Resources, State of Louisiana
HONORABLE HERBERT W. THOMPSON
Assistant Secretary, Commissioner of Conservation, State of Louisiana

October 1, 1985

*Counsel of Record

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

BEST AVAILABLE COPY

16 P

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1076

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
Appellant,

v.

THE STATE OIL AND GAS BOARD OF MISSISSIPPI
AND
COASTAL EXPLORATION, INC., *et al.*,
Appellees.

On Appeal from the Supreme Court of Mississippi

MOTION OF THE STATE OF LOUISIANA FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The State of Louisiana respectfully moves for leave to file a brief amicus curiae. Although consent of the parties is not required, pursuant to Rule 36.4, because the brief is presented for a state, Louisiana is filing this motion because it is aware that, unless this motion is granted, its brief amicus curiae would be considered untimely.

Louisiana is a major natural gas producing state and, in order to conserve its natural gas resources, has enacted "ratable take" statutory provisions similar to Rule 48 o_ the Mississippi Oil and Gas Board. Accordingly, a decision of this Court invalidating Mississippi's Rule 48 would cast serious doubt upon the validity of Louisiana's ratable take provisions. The

State of Louisiana thus has a direct interest in the issues raised by this case and believes that its brief amicus curiae would assist this Court in rendering its decision.

Louisiana was unable to submit its brief amicus curiae earlier due to its limited legal resources. It is respectfully requested that the Court grant this motion in order to permit Louisiana to call to the attention of the Court its interest in this case, in which the validity of its statute may be drawn into question.

Respectfully submitted,

*David B. Robinson
Deborah M. Lodge
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Attorneys for
The State of Louisiana

Honorable Edwin W. Edwards
Governor, State of Louisiana

Honorable William J. Guste, Jr.
Attorney General, State of Louisiana

Honorable B. Jim Porter
Secretary, Department of Natural Resources, State of Louisiana

Honorable Herbert W. Thompson
Assistant Secretary, Commissioner of Conservation, State of Louisiana

**Counsel of Record*

By: _____
David B. Robinson

October 1, 1985

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1076

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
Appellant,

v.

THE STATE OIL AND GAS BOARD OF MISSISSIPPI
AND
COASTAL EXPLORATION, INC., *et al.*,
Appellees.

On Appeal from the Supreme Court of Mississippi

BRIEF FOR THE STATE OF LOUISIANA AS AMICUS CURIAE

*DAVID B. ROBINSON
DEBORAH M. LODGE
PATTON, BOGGS & BLOW
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Attorneys for
The State of Louisiana

HONORABLE EDWIN W. EDWARDS
Governor, State of Louisiana
HONORABLE WILLIAM J. GUSTE, JR.
Attorney General, State of Louisiana
HONORABLE B. JIM PORTER
Secretary, Department of Natural Resources, State of Louisiana
HONORABLE HERBERT W. THOMPSON
Assistant Secretary, Commissioner of Conservation, State of Louisiana

October 1, 1985

*Counsel of Record

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 2

ARGUMENT:

Mississippi's Ratable Take Order Has Not Been Preempted By Federal Statute 3

Mississippi's Ratable Take Order Furthers the Legitimate Interests of the State and Does Not Unduly Burden Interstate Commerce 4

CONCLUSION 6

TABLE OF AUTHORITIES

CASES:	Page
Gibbons v. Ogden, 9 Wheat 1 (1824)	3
Hillsborough County, Florida v. Automated Medicated Laboratories, Inc., —— U.S. ——, 105 S.Ct. 2371 (1985)	3
Northern Natural Gas Co. v. State Corporation Commission of Kansas, 372 U.S. 84 (1963)	3
Pike v. Bruce Church, Inc., 397 U.S. 137 (1970)	4
CONSTITUTIONAL PROVISIONS:	
U.S. Const. Art. VI, Cl. 2	3
STATUTES:	
15 U.S.C. §§ 717 et seq.	2
15 U.S.C. § 717c	4
15 U.S.C. § 717f	4
15 U.S.C. § 3301 et seq.	2
15 U.S.C. § 3331(b)	4
15 U.S.C. § 3431(a)	4
Title 30, L.R.S. § 42	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1076

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
Appellant,

v.

THE STATE OIL AND GAS BOARD OF MISSISSIPPI
AND
COASTAL EXPLORATION, INC., *et al.*,
Appellees.

On Appeal from the Supreme Court of Mississippi

BRIEF FOR THE STATE OF LOUISIANA AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The State of Louisiana, a major natural gas producing state, regulates the development of gas reserves in Louisiana to maximize production over the life of the reservoir, to avoid drainage, and to assure that pipeline purchasers do not unfairly discriminate as between owners of gas in a single reservoir. The conservation of natural gas resources, promoted by Louisiana's regulation, is important not only to Louisiana but to the nation as a whole.

To promote conservation and to prevent drainage and discrimination, the Louisiana legislature has enacted "ratable take" statutory provisions whose validity would be cast in serious doubt by a ruling of this Court invalidating Rule 48 of the Mississippi Oil and Gas Board. *See* Title 30, L.R.S. § 42.

The State of Louisiana thus has a direct interest in the issues raised by this case, as those issues affect the ability of a state to manage the development of natural gas reserves in a way that best serves the interests of conservation and equity.

SUMMARY OF ARGUMENT

1. Congress has not preempted the states' ability to enforce ratable take provisions for purchases of deregulated natural gas. In the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. §§ 3301 *et seq.*, Congress removed such purchases from the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act ("NGA"), 15 U.S.C. §§ 717 *et seq.* This Court should thus give deference to Mississippi's decision to regulate the manner in which its natural resources are developed through ratable take provisions.

2. The ratable take provisions do not impose an unreasonable burden on interstate commerce. Indeed, in the absence of federal authority to regulate, the states must regulate in order to avoid the creation of an intolerable regulatory gap. When Transcontinental Gas Pipe Line Corporation ("Transco") contracted with some, but not all, of the producers of gas from a reservoir, it did so with full knowledge of the State's ratable take authority. Transco need not take any gas from a

reservoir in Mississippi; but if it does take, it must take ratably and without undue discrimination.

ARGUMENT

Mississippi's Ratable Take Order Has Not Been Preempted by Federal Statute.

State laws that "interfere with or are contrary to" federal law are preempted pursuant to the Supremacy Clause, U.S. Const. Art. VI, Cl. 2. *Gibbons* v. *Ogden*, 9 Wheat 1, 211 (1824). As this Court recently observed in *Hillsborough County, Florida* v. *Automated Medicated Laboratories, Inc.*, —— U.S. ——, 105 S. Ct. 2371, 2375 (1985), a conclusion that a state law is preempted by a federal statute generally is based on a finding (1) that Congress has expressly preempted state law; (2) that federal regulation of the area is so comprehensive as to justify the inference that Congress "left no room" for state regulation; or (3) that the field is one of such dominant federal interest as to preclude state regulation. None of these criteria supports a conclusion that Mississippi's regulation has been preempted.

The NGPA removed sales of "high cost" gas to producers altogether from the federal controls imposed by the Natural Gas Act. The NGPA does not explicitly or implicitly preempt state regulation.

Federal regulation is no longer so comprehensive as to displace state law. In *Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, 372 U.S. 84 (1963), this Court held that the NGA so "pervasively regulated" interstate sales and distribution of natural gas that a state ratable take regulation was preempted. Under the NGA, all producers wishing to sell gas in

interstate commerce were required first to obtain the prior permission (by the issuance of a certificate) of the Federal Power Commission ("FPC") or its successor agency, the Federal Energy Regulatory Commission ("FERC"). The brokerees were permitted to make sales only upon terms and conditions expressly authorized by the FPC or the FERC, and the price, terms, and conditions of the sale were comprehensively regulated. NGA §§ 4, 7, 15 U.S.C. §§ 717c, i. Entrpet, a brokeree could not halt a sale, once begun, without first receiving abandonment authorization from the Federal Power Commission. NGA § 7(b), 15 U.S.C. § 717f(b). The requirements of the Natural Gas Act were reheared as to the gas at issue in this case by Sections 151(b) and 103(a)(1)(B) of the NGPA. 15 U.S.C. §§ 3331(b), 3341(a)(1)(B). The NGPA was enacted with the express purpose of removing such gas from the regulatory authority of the FERC. Since federal authority no longer regulates the sale at issue here, the state must be free to regulate them in the interests of their conservation of its resources.

Mississippi's Example Take Order Furthers the Legitimate Interests of the State and Does Not Unduly Burden Interstate Commerce.

This Court articulated the applicable standard for assessing whether a state regulation impermissibly burdens interstate commerce in Pike v. Bruce Church, Inc., 397 U.S. 137, 145 (1970):

> Where the [state] statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.

Under this standard, the state action embodied in Mississippi's latable take order must be upheld. Mississippi's latable take order was issued in response to a clear need to regulate takes in light of the geological characteristics of natural gas reservoirs. Latable take orders are especially appropriate in conditions of oversupply, such as those presently today.

In times of oversupply, pipeline purchasers, in the absence of latable take orders, may discriminate against smaller producers and land owners, and they may take in ways which are inconsistent with prudent long-term development of a reservoir.*

With the passage of the NGPA, the FERC is no longer able to control sales of deregulated gas by producers to interstate pipelines. The federal authority is thus now unable to deal with the problems which latable take orders are designed to address. Unless state authorities are free to deal with them, an intolerable regulatory gap will be created.

Any problem on interstate commerce that would be caused by the enforcement of the latable take order are of Texaco's making. Texaco is not required to purchase gas gas from a reservoir, but, if it does, it must purchase latably. Texaco should not be allowed to use the Commerce Clause of the Constitution as a shield from contracts no longer bargainable to it or to protect itself against its own purchasing decisions. At the time it entered into its contracts, Texaco did so with full knowledge of the state authority to require latable takes.

---

* The American Courts print of the State of Texas (pp. 9-11) photograph explains the reasons latable take orders are in certain circumstances essential to promote conservation.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Mississippi Supreme Court.

Respectfully submitted,

*David B. Robinson
Deborah M. Lodge
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000
Attorneys for
The State of Louisiana

Honorable Edwin W. Edwards
Governor, State of Louisiana

Honorable William L. Guste, Jr.
Attorney General, State of Louisiana

Honorable B. Jim Porter
Secretary, Department of Natural
Resources, State of Louisiana

Honorable Herbert W. Thompson
Assistant Secretary, Commissioner
of Conservation, State of Louisiana
*Counsel of Record

By: David B. Robinson

October 1, 1982

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Motion for Leave to File Brief Amicus Curiae and Brief for the State of Louisiana as Amicus Curiae, by mailing first-class, postage pre-paid, three copies to counsel listed below:

Edwin Lloyd Pittman
Attorney General
State of Mississippi
Post Office Box 220
Jackson, Mississippi 39205

John Marshall Cromer, Esquire
Brunini, Grantham, Grower & Hewes
Post Office Drawer 119
Jackson, Mississippi 39205

R. V. Loftin, Jr., Esquire
Post Office Box 1398
Houston, Texas 77251

Frederick Moting, Esquire
Cromelt & Morino
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

Honorable Rex E. Lee
Solicitor General
Department of Justice
Washington, D.C. 20530

Glenn Gates Taylor, Esquire
Heidelberg, Woodliff & Franks
Suite 1030 Capitol Towers
Jackson, Mississippi 39201

Walker L. Walters, Esquire
GERALD, BRAND, WATTERS, COX & HEMLEBEN
400 Lamar Life Building
Jackson, Mississippi 39201

John Land McDavid, Esquire
McDAVID, EDMONSON & NOBLIN
8th Floor, City Center North
501 S. Lamar Street
Jackson, Mississippi 39201

William L. Waller, Esquire
WALLER & WALLER
412 East Capitol Street
Jackson, Mississippi 39201

Vernon L. Terrell, Jr., Esquire
FRANCHE, HARTLEY, LAPEYRE & OTTINGER
Suite 3018 One Shell Square
New Orleans, Louisiana 70139

Tim Mattox
Attorney General
State of Texas
Post Office Box 12548
Capitol Station
Austin, Texas 78711

John H. Cheatham III
1600 L Street, N.W.
Washington, D.C. 20036

Harold H. Tallisman
WRIGHT & TALISMAN, P.C.
1020 19th Street, N.W.
Suite 600
Washington, D.C. 20036

David B. Kopelson

Dated: October 1, 1982

David Crump
Legal Foundation of America
1303 San Jacinto
Houston, Texas 77002